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NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Part 1301

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission extends the exemption from the over-order obligation for fluid milk sold in eight-ounce containers distributed by handlers under open and competitive bid contracts and sold by School Food Authorities in New England through the operation of the Over-order Price Regulation. The prior regulation authorizing the school milk exemption will expire at the conclusion of the 1998–1999 school year.

EFFECTIVE DATE: July 1, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented

to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and adopted a compact over-order price regulation on May 30, 1997.¹ The Commission subsequently amended and extended the compact over-order price regulation.² In 1998, the Commission further amended specific provisions of the over-order price regulation, including the adoption of the school milk exemption regulation and the establishment of a reserve account for reimbursement to School Food Authorities.³ The current compact over-order price regulation is codified at 7 CFR Chapter XIII. The school milk exemption is codified at 7 CFR 1301.13(e).⁴

Article V, Section 11 of the Compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act ("APA"), as amended, 5 U.S.C. 553, to

¹ 62 FR 29626 (May 30, 1997).

² 62 FR 62810 (Nov. 25, 1997).

³ 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

⁴ The regulation provides: "Effective April 1, 1998, all fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the 1998–1999 contract year with School Food Authorities in New England, as defined by 7 C.F.R. 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact Over-order Price Regulation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies not later than May 1, 1998. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order price obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food service programs, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments." 7 CFR 1301.13(e).

provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that "publication or service of a substantive rule shall be made not less than 30 days before its effective date," subject to several enumerated exceptions, including situations where the agency finds "good cause" for dispensing with this requirement. See, 5 U.S.C. 553(d)(3). The Commission finds that there is good cause for dispensing with the 30-day waiting period of § 553(d) because compliance is impracticable, unnecessary, and contrary to the public interest.

The Commission emphasizes that this rule merely extends the current exemption adopted by the Commission after a comprehensive administrative process, including public hearing, notice-and-comment rulemaking, and a producer referendum, as well as a full 30-day notice period prior to the effective date. See, 63 FR 10104 (Feb. 27, 1998).

The Commission extends the exemption of school milk sold by School Food Authorities in eight-ounce containers through the operation of the Over-order Price Regulation, to be effective July 1, 1999, the beginning of the next school year. As with the exemption for the 1998–1999 school year, the extension will be implemented through a memorandum of understanding between the Commission and the appropriate state agencies. Continuation of the memorandum of understanding process allows the Commission and the state agencies to make any improvements in the implementation of the reimbursement program based on the experience of the current year.

The Commission held a public hearing to receive testimony on the proposal to extend the regulation exempting school milk from the over-order obligation on April 7, 1999 and additional comments were received until April 21, 1999.⁵ The Commission held a deliberative meeting on May 5, 1999 to consider the testimony and

⁵ 64 FR 12769 (March 15, 1999).

comments received.⁶ Based on the oral testimony and written comments received, the Commission hereby amends the current Over-order Price Regulation to extend the exemption for fluid milk sold in eight-ounce containers distributed by handlers under open and competitive bid contracts and sold by School Food Authorities in New England through operation of the price regulation.

II. Summary and Analysis of Issues and Comments

The Commission's Regulations Administrator, Carmen Ross, testified at the public hearing on April 7, 1999 and explained the issue and why the proposed amendment was needed. Mr. Ross testified that the current exemption regulation will expire at the end of the 1998–1999 school year.⁷ The current regulation exempts fluid milk “sold by School Food Authorities in New England in eight-ounce containers, distributed by handlers under open and competitive bid contracts” for the 1998–1999 contract year.⁸ Mr. Ross further explained that no other provision of the exemption regulation would be altered.⁹

A total of three individuals submitted oral and/or written public comments and all commenters generally supported the proposed extension of the school milk exemption.¹⁰ One commenter expressed support for the continuation of the exemption for the school milk program.¹¹

Another commenter emphasized the importance of the school lunch programs in providing proper nutrition to children.¹² This commenter also noted that the “stability in price that the Compact provides should assist school lunch programs in providing milk as part of the School Breakfast and Lunch programs.”¹³ Finally, this commenter referenced his prior testimony in the original school milk exemption rulemaking process in January 1998 and reiterated his support for the exemption to the extent the costs can be documented and attributable to the Compact Over-order Price Regulation.¹⁴

The third commenter also expressed general support for the continuation of the school milk exemption program.¹⁵ This commenter referenced his prior

testimony in the original school milk exemption rulemaking proceeding and reiterated the concerns expressed at that time.¹⁶ This commenter explained that “the Compact price only becomes effective when farm milk prices have collapsed well below the costs of milk production for most farmers. A school lunch exemption mandates that farmers will then be subsidizing milk to all school children at below their costs” and recommended that the “Commission consider developing a program that specifically targets the neediest children rather than a broad exemption that subsidizes all children at all income levels.”¹⁷

The Commission concludes that extension of the school milk exemption program, without further modification, is appropriate for all the same reasons the program was instituted initially.¹⁸ The Commission notes that the extension of the exemption regulation retains the requirement that eligible school food authorities demonstrate and document that the costs of milk in eight-ounce containers has been increased by operation of the Compact Over-order Price Regulation. The Commission extends the exemption, without reference to the student's income, due to the revenue structure of the school food service programs. In the original findings accompanying the school milk exemption, this decision was explained as follows:

The exemption is made applicable to all milk sold by school food service programs, rather than only milk qualified for reimbursement under federal child nutrition programs. According to the comment, the reimbursements are imbedded into the revenue structure for the school food service programs. The degree to which the reimbursements reduce program costs for milk, as opposed to the total food costs, cannot thereby be readily identified. As a result, to accomplish its purpose, all milk [sold in eight-ounce containers] must be covered by the exemption.¹⁹

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Compact Over-

order Price Regulation to establish a reserve fund for the reimbursement to school food authorities serves the public interest. The Commission reaffirms its prior finding that an exemption mechanism for milk sold in eight-ounce containers by school food service programs serves the public interest.²⁰ For all of the same reasons the Commission adopted the previous regulation,²¹ the Commission finds that the public interest will be served by amending the Over-order Price Regulation to extend the exemption through operation of the Over-order Price Regulation.

b. The Impact on the Price Level Needed to Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers the impact of the amendment on the level of producer price needed to cover the costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area and for manufacturing purposes.²² The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.²³ The Commission previously concluded that, although amending the Compact Over-order Price Regulation to exempt certain milk sold by school food authorities would decrease the producer pay price, the price regulation would nevertheless remain at a sufficient level to assure that producer costs of production are covered and to elicit an adequate supply of fluid milk for the region.²⁴ The Commission now reaffirms this finding.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed to Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendment serves to extend the prior regulation establishing an exemption from the price regulation for certain milk sold by school food authorities. Therefore, the matter of the public interest is addressed under the first required

⁶ 64 FR 19552 (April 21, 1999).

⁷ Ross, Transcript (“Tr.”) at 9.

⁸ Ross, Tr. at 8–9.

⁹ Ross, Tr. at 9.

¹⁰ DiMento, Tr. at 11–12; Berthiaume, Tr. at 15; and Wellington, Tr. at 16.

¹¹ DiMento, Tr. at 11.

¹² Berthiaume, Tr. at 15.

¹³ Berthiaume, Tr. at 15.

¹⁴ Berthiaume, Tr. at 15.

¹⁵ Wellington, Tr. at 16.

¹⁶ Wellington, Tr. at 16.

¹⁷ Wellington, Tr. at 16.

¹⁸ See, 63 FR 10104 (Feb. 27, 1998).

¹⁹ 63 FR 10108 (Feb. 27, 1998) (footnote omitted).

²⁰ 63 FR 10106–10110 (Feb. 27, 1998).

²¹ See, footnote 4 for text of the regulation.

²² As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. 62 FR 29632 (May 30, 1997); 62 FR 62812 (Nov. 25, 1997); and 63 FR 10109 (Feb. 27, 1998).

²³ 62 FR 29632–29637 (May 30, 1997); 62 FR 62812–62817 (Nov. 25, 1997); and 63 FR 10109–10110 (Feb. 27, 1998).

²⁴ 63 FR 10110 (Feb. 27, 1998).

finding and not under this finding. In any event, the Commission concludes that the price regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendment Are Approved by Producers.

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of June 11 through June 21, 1999. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during January 1999, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before June 11, 1999 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on June 21, 1999. The ballots were opened and counted in the Commission offices on June 22, 1999 under the direction and supervision of Mae S. Schmidle, Chair of the Commission and designated "Referendum Agent."

Ten Cooperative Associations were qualified to cast block votes and notified of the procedures necessary to block vote by letter dated June 4, 1999. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on June 21, 1999. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by June 15, 1999 with notice

mailed to the Commission offices no later than June 17, 1999.

Notice

On June 22, 1999, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 3,975 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following:

A total of 3975 ballots were mailed to eligible producers.

A total of 3,156 ballots were returned to the Commission.

A total of 25 ballots were disqualified—late, incomplete or duplicate.

A total of 3,120 ballots were verified.

A total of 3,076 verified ballots were cast in favor of the price regulation.

A total of 44 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the 3,120 verified ballots cast, 98.6%, or 3,076, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment are approved by producers.

IV. Good Cause for Effective Date Within 30-Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective

date, except that this time period is not required for a substantive rule which grants or recognizes an exemption or relieves a restriction or as otherwise provided by the agency for good cause found and published with the rule. The Commission concludes that there is good cause for non-compliance with the 30-day advance publication provision of § 553(d) and publishes this final rule on June 28, 1999, with an effective date of July 1, 1999.

The Commission previously adopted a regulation exempting certain milk sold by school food authorities from the Compact Over-order Price Regulation and published that final rule on February 27, 1998 with an effective date of April 1, 1998, more than 30 days after its publication.²⁵ That exemption was duly promulgated with full compliance of all applicable notice, hearing and comment provisions of the Administrative Procedure Act.²⁶ In addition, the prior exemption regulation was approved by producers pursuant to a producer referendum conducted in February 1998. The producer referendum procedure²⁷ requires the Compact Commission to distribute a ballot to each producer eligible to cast a ballot in the referendum. The ballot must include a description of the terms and conditions of the referendum and an official copy of the proposed regulation or amendment. This final rule merely extends the previously approved regulation and this final rule was also approved by producer referendum conducted in June 1999.

The commission determines that compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1) impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g., Service Employees Intern. Union, Local 102 v. County of San Diego*, 60 F.3d 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann v. Schweiker*, 676 F.2d 352 (9th Cir. 1982) (same).

(1) It would be impracticable to provide the thirty-day interval because the previously published amendment exempting certain school milk for the 1998–1999 school year expires on June 30, 1999. The full thirty-day notice

²⁵ 63 FR 10104 (February 27, 1998).

²⁶ *See*, 63 FR 10104, 10105 (February 27, 1998) (describing administrative proceedings culminating in the adoption of the rule exempting certain school milk from the operation of the Over-order Price Regulation.)

²⁷ Compact Commission Bylaws, Article VI, section I, 7 CFR Part 1371.

would not allow the Commission to implement the exemption extension at the beginning of the 1999–2000 school year, which begins on July 1, 1999; and

(2) The full thirty-day notice is unnecessary because this amendment merely extends the existing rule exempting school milk from the Compact Over-order obligation; and

(3) The full thirty-day notice requirement would be contrary to the public interest, as found by the Commission in adopting both the underlying school milk exemption regulation, and this extension of that regulation, because the Commission could not implement the extension at the start of the 1999–2000 school year. Thus, the otherwise required thirty-day notice procedure would seriously impair the effectiveness of the amendment.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. In this instance, the amendment merely extends a rule that all affected people have had notice of since publication of the school milk exemption regulation on February 27, 1998. The action required by the amendment is to be taken by the Commission through the extension of the exemption program and the development of a Memorandum of Understanding with the appropriate state agencies in the six New England states. Those most affected by the amendment are (1) the school food authorities whose interests are best served by the Commission extending the exemption regulation, and (2) the producers, all of whom have received ballots in February 1998 and June 1999 to vote on, and approve, the adoption of the school milk exemption and its extension. For all of these reasons, the full thirty-day notice period is not required.

IV. Required Findings of Fact

Pursuant to Compact Article V. Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of the Over-order Price Regulation to dairy farmers under Article IV to extend the exemption of milk sold in eight-ounce containers by school food authorities in New England.

(2) That a level price of \$16.94 (Zone 1) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of

production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum as required by Article V. section 13.

List of Subjects in 7 CFR Part 1301

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR Part 1301 as follows:

PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.13 is amended by revising paragraph (e) to read as follows:

§ 1301.13 Exempt milk.

* * * * *

(e) All fluid milk distributed by handlers in eight-ounce containers under open and competitive bid contracts for the school milk contract year with School Food Authorities in New England, as defined by 7 CFR 210.2, to the extent that the school authorities can demonstrate and document that the costs of such milk have been increased by operation of the Compact over-order obligation. In no event shall such increase exceed the amount of the Compact over-order obligation. Documentation of increased costs shall be in accordance with a memorandum of understanding entered into between the Compact Commission and the appropriate state agencies for the school milk contract year. The memorandum of understanding shall include provisions for certification by supplying vendor/processors that their bid and contract cost structures do in fact incorporate the over-order obligation, in whole or in part, and provisions for defining the components of cost structure to be provided in support of such certification. The memorandum shall also establish the procedure for providing reimbursement to the school food authorities, including the scheduling of payments and the amount to be escrowed by the Commission to account for such payments.

Dated: June 22, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–16296 Filed 6–25–99; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 616, 618, and 621

RIN 3052–AB63

Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule clarifies existing regulations and provides Farm Credit System (FCS or System) institutions with more regulatory guidance about leasing activities. The rule reflects comments received from two public comment periods.

EFFECTIVE DATE: These regulations will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a document announcing the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 15, 1997, we published a proposed rule to replace the existing regulatory guidance about System institutions' leasing activities (62 FR 53581). After considering the six comment letters received, we made revisions and asked for additional comment on a repropounded rule (63 FR 56873, Oct. 23, 1998).

We received five comment letters on the repropounded rule; four from System banks and one from the Farm Credit Leasing Services Corporation (Leasing Corporation). The commenters commented about borrower rights, notice of action on applications, stock purchase requirements, and out-of-territory leasing.